



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, LRE, MNDCT, OLC, PSF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 12, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to provide services or facilities required by tenancy agreement or law;
- an order to assign a sublet;
- an order restricting the Landlord's right to enter;
- an order that the Landlord comply with the Act; and
- a monetary order for damage or compensation;

The Tenant and the Landlord's Agent M.G. attended the hearing and provided affirmed testimony.

The Tenant testified that he served his Application package to the Landlord in person, however, the Tenant could not recall the date of service. The Landlord's Agent confirmed receipt of the Tenant's Application. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Tenant stated that he served a copy of his documentary and digital evidence to the Landlord by registered mail. The Landlord's Agent stated that they did not receive any evidence from the Tenant. The Tenant stated that the evidence was provided to the Landlord in relation to a previous hearing and that he intended to reply on the same evidence. The Tenant could not recall when the evidence was served to the Landlord. The Tenant provided a tracking number that does not appear to be consistent with a Canada Post tracking number. Furthermore, the Tenant did not submit confirmation of the registered mail being sent to the Landlord.

Preliminary Matters

Residential Tenancy Branch Rule of Procedure 3.14 states (the "Rule of Procedure"), in regard to evidence not submitted at the time of Application for Dispute Resolution by the

Applicant, that documentary and digital evidence that is intended to be relied on at the hearing must be received by the Respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

The Rules of Procedure 3.5 states that at a hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Residential Tenancy Branch Rules of Procedure

The Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I find that the Tenant has provided insufficient evidence to demonstrate that the Tenant served his documentary and digital evidence to the Landlord in accordance with the *Act* and the Rules of Procedure. For this reason, the evidence submitted to the Residential Tenancy Branch by the Tenant will not be considered in this Hearing. Only oral testimony from the Tenant will be considered in lieu of the documentary evidence.

During the hearing, the parties confirmed that the Tenancy has ended. As such, the Tenant's claims for; an order to provide services or facilities required by tenancy agreement or law, an order to assign a sublet, an order restricting the Landlord's right to enter, and an order that the Landlord comply with the *Act* are now moot and are therefore dismissed without leave to reapply.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties agreed that the tenancy ended on or near the end of September 2019. The Tenant stated that he is seeking monetary compensation in the amount of \$600.00.

The Tenant stated that during the tenancy he helped the Landlord with some yard work. The Tenant stated that he used his own tools to dig roots out of the ground. The Tenant also climbed trees to cut down some branches. The Tenant stated that he worked 30 hours over three weekends for the Landlord. The Tenant stated that the parties had agreed that the Landlord would pay the Tenant \$20.00 per hour for his efforts.

The Tenant stated that to date, the Landlord has not compensated the Tenant. As such, the Tenant is claiming for a monetary order in the amount of \$600.00 relating to the employment agreement.

In response, the Landlord's Agent stated that the Tenant offered to help the Landlord in the yard. The Landlord's Agent stated that the Tenant worked for 4 or 5 hours before the Tenant mentioned he would like to be paid \$20.00 for his assistance. The Landlord's Agent stated that it was at this point that the Landlord notified the Tenant that he no longer needed his assistance as he was not willing to pay the Tenant for his assistance.

The Tenant stated that he also had no heat in his rental unit, therefore he was unable to dry his clothes. The Tenant stated that he attempted to dry his work boots by making use of his stove, which melted his work boots. In response, the Landlord's Agent stated that the Tenant has control of his own heat and that there has only been one issue relating to heating during the tenancy and that the Landlord fixed the issue immediately.

The Tenant stated that he is claiming for loss of quiet enjoy as he had to endure the Landlord and his children making noise above him during the late hours of the night. The Tenant stated that he could hear banging on the floor and that they were not quiet.

Lastly, the Tenant stated that he is claiming \$100.00 for materials that he had purchased to help the Landlord build a shed in the yard. The Tenant stated that the parties agreed that the Landlord would reimburse the Tenant for the cost of the materials. In response, the Landlord's Agent stated that the agreement was that the Landlord would pay the Tenant \$50.00 which he has already done.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant stated that he is seeking \$600.00 after he helped the Landlord with some yard work during the tenancy. The Tenant stated that he worked 30 hours over three weekends for the Landlord. The Tenant stated that the parties had agreed that the Landlord would pay the Tenant \$20.00 per hour for his efforts.

The Tenant stated that he is claiming \$100.00 for materials that he had purchased to help the Landlord build a shed in the yard. The Tenant stated that the parties agreed that the Landlord would reimburse the Tenant for the cost of the materials.

I find that the Tenant has applied for monetary compensation relating to a verbal employment agreement. I find that the Tenant has provided insufficient evidence to demonstrate that this agreement relates to any terms of the tenancy. I find that this constitutes an employment dispute which I do not have jurisdiction over.

The Tenant stated that he also had no heat in his rental unit, therefore he was unable to dry his clothes. The Tenant stated that he attempted to dry his work boots by making use of his stove, which melted his work boots. In response, the Landlord's Agent stated that the Tenant has control of his own heat and that there has only been one issue relating to heating during the tenancy and that the Landlord fixed the issue immediately.

I find that the Tenant has provided insufficient evidence to demonstrate that there was a heating issue as a result of the Landlord has breaching the *Act*. The Tenant has also provided insufficient evidence to demonstrate the value of his loss or that he mitigated his loss.

The Tenant stated that he is claiming for loss of quiet enjoy as he had to endure the Landlord and his children making noise above him during the late hours of the night. The Tenant stated that he could hear banging on the floor and that they were not quiet. I find that the Tenant has provided insufficient evidence to prove the existence of the loss of quiet enjoyment, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Furthermore, I find that the Tenant provided insufficient evidence to demonstrate the value of the loss or damage or that the Tenant took steps to minimize his loss.

In light of the above, I dismiss the Tenant's Application in its entirety without leave to reapply.

Conclusion

I dismiss the Tenant's Application for monetary compensation, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 25, 2019

Residential Tenancy Branch